

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on January 31, 2001 at 10:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Pete Ekegren (R)
Sen. Jim Elliott (D)
Sen. Eve Franklin (D)
Sen. Ken Toole (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Lynette Brown, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SR 10, SR 9, 1/22/2001
Executive Action:

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SR 10

Sponsor: SEN. DON HARGROVE, SD 16, Belgrade

Proponents: Dan Antonietti, Veterans of Foreign Wars
Russ Ritter, Montana Rail Link
Patrick Judge, himself

Opponents: None

Major General John E. Gene Prendergast, Director of the Department of Military Affairs, opened with information about his work history experiences. **Major General Prendergast** shared that his military career began with joining the Montana Air National Guard in 1958, transferred to the Army Guard, and has worked with the National Guard full time since 1960. He has served on a large variety of positions during his time with the National Guard. He was Director of Military Affairs serving under Governor Marc Rocicot and has been requested by Governor Judy Martz to continue in that position.

Major General Prendergast explained he is responsible for the Army National Guard which has 2,400 soldiers in 23 locations in Montana, and the Air National Guard which has 1,000 men and women in Great Falls, Mt., Disaster Emergency Services, and the Challenge Program for young people at risk. **Gen. Prendergast** stated he feels he has the greatest program in state government. 1,700 National Guardsmen worked during the fire season of 2000. The helicopter aviation unit dropped 2.3 million gallons on the fires. **Gen. Prendergast** said he felt strongly about physical fitness. The Air National Guard serves all over the world continuously.

Gen. Prendergast said on the federal level, there was a helicopter unit, and people in Kuwait. In the year 2002, there will be two companies in the infantry battalion serving in Bosnia.

Proponents' Testimony:

Dan Antonietti, Veteran's of Foreign Wars, strongly recommended **Gen. Prendergast** for the position of Director of Military Affairs.

Russ Ritter, himself and Montana Rail Link, stated **Gen. Prendergast** has brought the different units together to work more efficiently. **Gen. Prendergast** leads by example and is a communicator, **Mr. Ritter** said. **Mr. Ritter** told the committee that **Gen. Prendergast** was responsible for allowing trains to continue moving throughout the state during the 2000 fire season based on the conditions set by the Department of Military Affairs and the Forest Service working together.

Patrick Judge, representing himself, said **Gen. Prendergast** has always been supportive of community activities also.

Opponents: None

Questions from Committee Members and Responses:

SEN. EVE FRANKLIN asked **Gen. Prendergast** how the scholarship program is going? He responded that recruiting is difficult without scholarship programs. The young people that are staying in the guard are the ones using the scholarships and going to college. **Sen. Franklin** asked if money had been made available for the scholarships? **Gen. Prendergast** answered that the scholarship program was presently at \$250,000.

SEN. KEN TOOLE asked **Gen. Prendergast** to comment on the controversy of the skate board park located in Helena. **Gen. Prendergast** replied that he had met with the head skateboarder privately and offered an area behind the National Guard Armory. The city of Helena initially did not want the park in that location, therefore, much discussion followed with a variety of people and agencies. In the end, the location chosen was the same location **Gen. Prendergast** initially offered. **SEN. TOOLE** told the committee he was impressed with the manner in which **Gen. Prendergast** handled the situation.

SEN. TOOLE inquired of **Gen. Prendergast** if security issues are still a threat? **Gen. Prendergast** responded that at the present time, after the Freeman situation calmed down, that threat has calmed down.

SEN. JOHN BOHLINGER asked **Gen. Prendergast** how well trained are the soldiers in his trained for combat situations? **Gen. Prendergast** replied that the Montana National Guard are one of the most respected in the country. He again stated physical fitness was a very important aspect of training in Montana.

SEN. BOHLINGER asked how long the commitment is when joining the National Guard? **Gen. Prendergast** answered the obligation is for six years. **SEN. BOHLINGER** asked how they train the people if the person registering had no prior military experience? **Gen. Prendergast** responded they first are sent to basic training, then AIP training. Following those trainings, they train one weekend every month with a two week encampment every summer.

SEN. ED BUTCHER asked **Gen. Prendergast** if the National Guard is taking a more active role in police efforts throughout the world? He responded that, yes, 53% of the combat mission is in the active line.

SEN. BUTCHER asked if they are encountering putting more pressure on the recruitment because of the Guardsmen combating more? **Gen. Prendergast** answered there is an employee support group where

those people go to talk to employers to explain the need for the employee to be absent for the length of time required. He added there was also a national debate concerning the length of time they can use the guardsmen because of concerns expressed by employers.

SEN. EKEGREN asked **Gen. Prendergast** if the Teen Challenge was successful? **Gen. Prendergast** said he was proud of the Teen Challenge Program at Dillon. He told the committee the program is a very structured program for kids at risk, with everyone lined up with a mentor for a year afterwards, which he explained was a large factor concerning its success. The Teen Challenge Program is a volunteer program which the kids apply for; they are free to leave the program at any time. Once the kids pass their GED, they can take college courses. **SEN. EKEGREN** said it was a great program.

SEN. JIM ELLIOTT expressed great support for **Gen. Prendergast**.

SEN. BUTCHER asked **Gen. Prendergast** what the age of the young people was for the teen Challenge Program? **Gen. Prendergast** responded the kids have to be drug free, no felonies, and they have to volunteer for the program. These kids need discipline and someone who cares, **Gen. Prendergast** stated.

SEN. HARGROVE asked **Gen. Prendergast** about the state budget for his department? **Gen. Prendergast** replied the Department's federal budget was close to \$106 million, and the state budget is close to \$4 million. The program in Montana is the largest in the United States. **Gen. Prendergast** added they were building a regional training center at Fort Harrison, Helena, for special forces and special operations. They are also building a National Guard unit at Malmstrom Air Force Base at Great Falls.

SEN. HARGROVE asked **Gen. Prendergast** about his involvement with the homeless veterans? **Gen. Prendergast** replied that he wanted to do everything he could do to support the veterans. He put together a Veteran's Coalition with the state agencies, the Veteran's Administration, and the state veterans to attempt to solve some problems for the veterans. He told the committee there were many homeless veterans and the situation is difficult at times because some of the homeless veterans want to remain homeless and be left alone. **Gen. Prendergast** was proud of the success of the coalition and cooperation of different organizations and agencies working together.

Gen. Prendergast closed SR 10 by telling the committee that he loved his job. **EXHIBIT (sts25a01)** **Gen. Prendergast** passed out a

hand-out describing the Department of Military Affairs 2000 impact brochure.

HEARING ON SR 9

Sponsor: SEN. DON HARGROVE, SD 16, Belgrade

Proponents: Patrick Heffernan, Montana Logging Association
Cary Hegreberg, Montana Wood Products

Opponents: Jim Jensen, Executive Director Montana Environmental Center

The confirmation hearing for **Bud Clinch, Director of Natural Resources and Conservation**, began with **Mr. Clinch** sharing information concerning his position and past experience. **Mr. Clinch** oversees the department with its' \$60 million budget, 500 employees, 40 field offices and multitude of programs. DNRC is field oriented, with 2/3 of its employees being located outside of Montana. He referred to the "new" DNRC which is different from the original DNRC. The present DNRC was reorganized in 1995 which combined three natural resource agencies. DNRC is composed of seven divisions: 1.) Reserve Water Rights Compact Commission, which is a legislatively mandated branch to oversee the resolution of water resources as they pertain to those federally reserved rights on Indian reservations, federal lands, U.S. Fish and Wildlife Service properties and other federally reserved water rights, 2.) Board of Oil and Gas, having quasi-judicial powers, overseeing oil development, 3.) Centralized Services, which provide services that all divisions share in, 4.) Trust-Land Management Division, which oversees the management of school trust lands, 5.) Forestry Division, which performs two major functions. One function is fire and aviation, and the other function is a number of programs such as an equipment development center, as well as the services the department provides to the public. **Mr. Clinch** added in a normal year, fire-fighting expenses are \$7 million, whereas the 2000 fire season incurred costs of \$52 million. There are a variety of other funding sources that come back to cover close to 50% of those costs in reimbursements so the net cost to the state for the last fire season is around \$12 million. 6.) Water Resource Division which oversees water, water rights, water projects, water planning on all landscapes in Montana. He added that water resources affect everyone in Montana ranging from recreation, to domestic use, agricultural use among others. Within this division, there is a water projects bureau which oversees state owned water projects.

Mr. Clinch shared there is often controversy in the Water Resource Division because of the effect the water has on everyone. 7.) The Conservation and Resource Development Division, a small division with substantial ramifications to a wide variety of programs throughout the state. This division provides technical and financial assistance to conservation districts. A substantial loan and grant program exists through this division, **Mr. Clinch** said. There are two state revolving fund accounts in this division: 1.) The Waste Water Revolving Fund, and 2.) The Drinking Water Revolving Fund.

Bud Clinch stated his position faces a magnitude of responsibilities and challenges. **Mr. Clinch** shared he was a former state employee, has worked with the Montana Logging Association, was a leading player in forest practices in Montana, and was heavily involved in accomplishments in the woods practices industry. He came to Montana to pursue a career in forestry. **Mr. Clinch** expressed he is a firm believer in the ability to have environmental protection, natural resource use and utilization. This can be done in a responsible manner.

Proponents' Testimony:

Patrick Heffernan, Montana Logging Association, testified that **Bud Clinch** was instrumental in changes in the logging business and timber industry. **Mr. Clinch** has determination and conviction. He said **Mr. Clinch** has helped to protect resources and fisheries. **Mr. Clinch** has been effective in protecting the environment in a do-able manner. **Mr. Heffernan** said the DNRC was responsive in developing training for timber harvesting contractors and employees and in the summer 2000 fire season helping with getting the timber industry employees trained as technical specialists to help with the fire suppression activities. **Mr. Heffernan** said there has been a dramatic improvement in the Trust Land Division, especially with the trust beneficiaries and the environmental protection standards implemented on the ground and enforced by the DNRC during the state trust land timber sales. **Mr. Heffernan** gave testimony on behalf of **Cary Hegreberg, Montana Wood Products**, saying he gave support for **Bud Clinch**. **Mr. Heffernan** stated **Mr. Clinch** helped the wood industry in many ways with increased jobs among them. He said **Bud Clinch** shows good leadership, the morale of the agency is good, and they enjoy working with DNRC.

Opponents' Testimony:

Jim Jensen, Executive Director of the Montana Environmental Center, expressed he is troubled because of a consistent pattern

he sees in **Bud Clinch** of resisting compliance with the basic environmental laws of Montana, most notably the Montana Environmental Policy Act, known as MEPA. A number of years ago, ranchers north of Lewistown started losing their water which was caused by the Kendall Mine. The ranchers turned to the DNRC because they were on the brink of going out of business due to losing the water. The water was being contaminated and converted and wasted by this company. The ranchers filed a complaint with the DNRC. **Mr. Jensen** stated this shows an example of an overall attitude within the department that says as far as MEPA is concerned and the duty of the department to protect resources and conserve those resources for individuals is as opposed to industry is very troubling and consistent. The issue was not resolved until the following February, which was the next winter. The result of that hearing was that it was ok for a mine to waste water, taking water from the rancher downstream to send it into the air for mining use, he said.

Mr. Jensen also specified the situation of the Edens Water Right in the Helena valley where a large sub-divider received permission to dig a big well in the valley. Local ranchers requested a study be done by the DNRC to show the ranchers would not be harmed by allowing this other user to deplete the ground water supply. DNRC would not do the study. **Mr. Jensen** voiced his concern that these examples, along with DNRC bringing bills to the legislature to attempt to change and weaken themselves from MEPA.

Jim Jensen said MEPA is a law which requires science be brought to bear, and an analysis be generated prior to a decision by an agency to enable the agency to make an informed decision. He said DNRC repeatedly implies that MEPA is a big problem. **Mr. Jensen** stated he believed this behavior has resulted in a considerable amount of litigation, causing taxpayers money.

In terms of timber sales, **Jim Jensen** requested the committee consider the Soup Creek timber sales.

Mr. Jensen said the conservation supervisors feel the DNRC has not done a good and responsive job.

Questions from Committee Members and Responses:

SEN. ED BUTCHER asked **Bud Clinch** why the DNRC did not require some of the water in the Kendall Mine situation be kept for the ranchers' use? **Mr. Clinch** replied the department was not attempting to stall and delay response to the situation. **Mr. Clinch** added that issues relating to water issues are very complex; while the issue may appear simple on the surface, it is

not. In the Kendle Mine situation, **Mr. Clinch** continued, there were specific requirements in the operation that required them to capture water and disperse the water in the manner stated to prevent the water from moving OFF-SITE and potentially impacting other's water. The issue was the capture of the total stream flow off the Mine was impacting the water rights of the people downstream. The Department of Environmental Quality, as well as DNRC, was involved in analyzing that as well DNRC regional staff in Lewistown. In the initial analysis was also during a time when there was a reduction in annual precipitation and re-charge. Because of this, it was difficult to quantify if less water downstream was totally a result of the mine, and if so, what percentage. As a result of the studies done, DNRC was not convinced the water problem was a direct result from the mine. The Department has since looked into this situation and have compromised with the downstream users by offering some alternative water sources.

SEN. JIM ELLIOTT shared praise for DNRC for advice given to the timber community concerning timber markage and management. **SEN. ELLIOTT** asked **Bud Clinch** what the problem was with the Soup Creek Sale? **Mr. Clinch** said the Soup Creek is located in the Swan Valley which is the home of grizzly bear, wolverine, lynx, and trout, and is also the home of a strong environmental group called "Friends of the Wild Swan". The lawsuits are all centered around MEPA. **Mr. Clinch** said the process of MEPA allows an unending look into the process and analysis, which makes it impossible for the department to ever produce a totally defendable document under the current court's interpretations. The department also has problems with litigants in the trials raise new issues with timber sales that were not raised while the department was doing the analysis. **Mr. Clinch** stated the department has been ineffective in producing timber sales for the Swan Valley because of continued litigation problems in that area.

SEN. FRANKLIN asked what is the multiple-use issue of trust lands? **Mr. Clinch** responded that state lands have a mission to be managed with the understanding that no interest shall be disposed of without full market value, taking both the short-term and long-term productivity into account.

SEN. DON HARGROVE presented **Mr. Clinch** with an opportunity to discuss the allegation by **Mr. Jensen** that **Bud Clinch** has shown a pattern of resisting MEPA. **Mr. Clinch** told the committee there has been a long history of disagreements philosophically between himself and **Jim Jensen** and his organization. MEIC, whom **Jim Jensen** represents is at the heart of several litigations. There are presently two litigations pending cases revolving around the

development of Section 36, and a second one revolving around the management of old growth timber on state lands. He said it came as no surprise to have **Jim Jensen** oppose him, even though he testified as a proponent for **Mr. Clinch** in 1993, because there are some very basic philosophical differences about natural resource management that set them apart. **Mr. Clinch** stated that if given enough time to share with the committee, he could counteract any of the allegations specified by **Mr. Jensen** with specific details. **Mr. Clinch** said his department has, in fact, produced 300 MEPA documents over the past three years.

SEN. TOOLE requested the possibility of continuing this hearing on another day to allow for further questions. **Mr. Clinch** agreed to return another day to finish the hearing and answer questions.

ADJOURNMENT

Adjournment: 12:15 P.M.

SEN. DON HARGROVE, Chairman

LYNETTE BROWN, Secretary

DH/LB

EXHIBIT (sts25aad)